

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3292 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO
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KANTILAL P.SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3292 of 1994
MS. ROOPA SREEDHAR FOR MR BS PATEL for Petitioner
No. 1
MR. MANKAD, AGP, for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 25/02/2002

ORAL JUDGEMENT

1. K.P. Shah-petitioner has filed this petition with a prayer for a writ of certiorari or direction setting aside the order passed by the District Development Officer, respondent No. 2, dated 22.4.1993 by which the petitioner was directed to deposit Rs. 6,550/-. The authority has taken this decision because of the inaction and negligence on the part of the petitioner, the taluka panchayat has suffered a loss of Rs.. 6,550/-.

2. The facts giving rise to this petition are as under:

2.1 The petitioner was working as Taluka Development Officer at Bharuch from 18.6.1983 to 31.7.1984. The petitioner served as TD0, Bharuch from 1.8.1984 to 31.8.1987. The petitioner was serving at Bharuch District Panchayat as Taluka Development Officer, Small Savings and Land Encroachment. The petitioner retired on 31.8.1987.

2.2 It has been stated in the petition that three years after the retirement, the Director, Medical Services has issued notice dated 30.4.1990 to the petitioner. In the said notice it was alleged that the petitioner has rejected the tender of one Balgovind Kuberdas which was less by Rs. 6,550/- than the tender of Vijay Industries whose tender was accepted. Because of inaction and negligence on the part of the petitioner, the Taluka Panchayat suffered a loss of Rs. 6,550/-.

2.3 The petitioner replied to the said notice on 29.6.1990. It is submitted that the authority did not issue "no due certificate" regarding pension even though the petitioner asked for the same.

3. The learned counsel for the petitioner has submitted that the petitioner was serving sincerely and there was no irregularity committed by him as stated in the order. He has further submitted that he was only Secretary to the Panchayat and everything has been done in the presence of Taluka Panchayat President and other competent officers and it was done legally. He further submitted that the petitioner has retired in the year 1987. As stated earlier notice has been issued in the year 1990 and the order has been passed by the authority in the year 1993 i.e. after a lapse of 9 years. Therefore, the said order is bad in law.

3.1 The learned counsel for the petitioner has relied on Rule 189A of Bombay Civil Services Rules. He has also relied on the judgement in the case of K.B. DESAI

VS. STATE & ANR. reported in 25(1) GLR 556 in which on page 558 at para 6 the court observed as under:

"We are not concerned with the other provisions of the rule. Suffice it to say that in the instant case no show cause notice had been served upon the petitioner while he was in service. Again, the alleged delinquency of the petitioner is for the period when he was Depot Manager in the year 1968 whereas the proceedings have been instituted in the year 1973, obviously after a lapse of four years. Therefore, Mr. Mazgaonkar has rightly relied upon rule 189-A and raised the contention that the enquiry suffers from three infirmities, namely:

- (1) that the enquiry has been instituted after the petitioner had retired;
- (2) that it is not shown that the Governor has given sanction to hold the enquiry; and
- (3) that the enquiry has been instituted in respect of the delinquency having been alleged to have committed before four years of the institution of the enquiry."

3.2 The learned counsel for the petitioner submitted that in this case the petitioner has retired as TDO on 31.8.1987. Thereafter, the Government issued show cause notice on 30.4.1990 based on 1983-84 audit demands. The learned counsel for the petitioner has submitted that admittedly show cause notice has been issued almost two and half years after the retirement of the petitioner and the same is based on 1983-84 audit demands. She has therefore submitted that the departmental inquiry is bad in law. She has further stated that the petitioner, on facts of the case, has acted bona fide. In this case all tenders were accepted and the only allegation against the petitioner is that he has not accepted the tender of one Balgovind Kuberdas whose tender was received though on 27.3.1984 but the same was received at 6.40 p.m. on that day. She has submitted that the petitioner has accepted all tenders which were there on 27.3.1984 till 2.00 p.m. In my view acceptance of tender till 2 O'clock is rational but thereafter it will have to consider the legality, validity and propriety of the tender. In my view there is no illegality committed by the petitioner by rejecting the tender which was received on 27.3.1984 at 6.40 p.m. In view of the above factual position, the

action of the department is not legal and valid.

4. I have considered the facts and circumstances of the case. In this case the allegation against the petitioner is that because of his inaction the panchayat has suffered loss of Rs. 6,550/- that was based on the fact that the petitioner has not accepted the tender of Balgovind Kuberdas whose tender was received by the office on 27.3.1984 at 6.40 p.m. In my view, the petitioner has acted fairly in not accepting the tender which was received at 6.40 p.m. on 27.3.1984 which is obviously after the office hours. The petitioner has therefore acted bona fide while rejecting tender of Balgovind Kuberdas which was received on 27.3.1984 at 6.40 p.m. In view of the same, there is no inaction or negligence on the part of the petitioner in not accepting the tender of Balgovind Kuberdas.

5. In view of the the judgement in the case of K.B. DESAI (supra) and in the light of the above observations, I am of the view that the order of respondent No. 2, District Development Officer, Bharuch District Panchayat, directing to recover Rs. 6,550/- from the petitioner is illegal and bad and the same is quashed and set aside. Therefore, now the Government may issue "no due certificate" to the petitioner if no other inquiry is pending against the petitioner. If no other inquiry is pending against the petitioner then the respondent authorities pay the balance amount of gratuity and pension to the petitioner. This petition is allowed accordingly. Rule is made absolute with no order as to costs.

(K.M. MEHTA, J)

(pkn)